





## Hussein (Migration) [2024] AATA 142 (24 January 2024)

### DECISION RECORD

|                           |                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DIVISION:</b>          | Migration & Refugee Division                                                                                                                                                                                                                                                                                                                                                             |
| <b>REVIEW APPLICANT:</b>  | Mr Ahmed Hussein                                                                                                                                                                                                                                                                                                                                                                         |
| <b>VISA APPLICANT:</b>    | Mrs Jinane Badra                                                                                                                                                                                                                                                                                                                                                                         |
| <b>REPRESENTATIVE:</b>    | Mrs Olia Kamededdine (MARN: 1574752)                                                                                                                                                                                                                                                                                                                                                     |
| <b>CASE NUMBER:</b>       | 2306539                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>DIBP REFERENCE(S):</b> | BCC2021/1953595                                                                                                                                                                                                                                                                                                                                                                          |
| <b>MEMBER:</b>            | Kira Raif                                                                                                                                                                                                                                                                                                                                                                                |
| <b>DATE:</b>              | 24 January 2024                                                                                                                                                                                                                                                                                                                                                                          |
| <b>PLACE OF DECISION:</b> | Sydney                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>DECISION:</b>          | <p>The Tribunal remits the application for a Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa:</p> <ul style="list-style-type: none"><li>• cl 309.211 of Schedule 2 to the Regulations</li><li>• cl 309.221 of Schedule 2 to the Regulations</li></ul> |

Statement made on 24 January 2024 at 2:26pm

### CATCHWORDS

*MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine and continuing relationship – validly married – financial, household and social aspects of relationship and nature of commitment – truthful and credible oral evidence, substantial documentary evidence and supporting statements – sponsor’s multiple travel to visit applicant despite work commitments and COVID restrictions – decision under review remitted*

### LEGISLATION

*Migration Act 1958 (Cth), ss 5F(2), 65*  
*Migration Regulations 1994 (Cth), r 1.15A(3), Schedule 2, cls 309.211(2), 309.221*

### CASE

*He v MIBP [2017] FCAFC 206*

## STATEMENT OF DECISION AND REASONS

### Application for review

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 8 April 2023 to refuse to grant the visa applicant a Partner (Provisional) (Class UF) visa under s 65 of the *Migration Act 1958* (the Act).
2. The visa applicant is a national of Lebanon, born in December 2001. She applied for the visa on 14 October 2021 on the basis of her relationship with her sponsor. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl 309.211 and cl. 309.221 because the delegate was not satisfied the applicant was the spouse of the sponsor. The sponsor ('the review applicant') seeks review of the delegate's decision.
3. The review applicant and the visa applicant appeared before the Tribunal on 24 January to give evidence and present arguments. The hearing was conducted with the assistance of an interpreter in English and Arabic. The review applicant was represented in relation to the review. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

### Relevant law

4. At the time the application was made, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
5. Clause 309.211(2) requires that, at the time the visa application was made, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. With limited exceptions that only apply in relation to a decision to grant or not grant a Subclass 309 visa made on or after 20 August 2022, the visa applicant must continue to be the spouse or de facto partner at the time of the Tribunal's decision: cl 309.221.
6. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in reg 1.15A(3). Each of the specific matters contained in reg 1.15A(3) is effectively a question which must be answered: *He v MIBP* [2017] FCAFC 206.

### Are the parties validly married?

7. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The visa applicant provided with her application evidence of having registered marriage with the sponsor in January 2021 in Lebanon. There is nothing to suggest the marriage is not valid. The Tribunal is satisfied on the basis of that evidence that the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a).

### **Are the other requirements for a spouse relationship met?**

8. This is the first married for both the applicant and the sponsor. They claim to have met in August 2019 at the house of the sponsor's uncle and exchanged their contact details. A few days later the sponsor invited the visa applicant with her family and expressed his feelings to the visa applicant's parents, receiving their blessing. The couple held an engagement ceremony on 5 September 2019 to be able to communicate with each other and to get to know each other better and they registered their marriage on 1 January 2021.
9. There is a substantial amount of documentary evidence before the Tribunal addressing different aspects of the relationship and much of that evidence was not before the delegate. The review applicant explained to the Tribunal that his previous migration agent ceased operating and could not be contacted, so he was not able to provide more evidence to the Department. The Tribunal has also had regard to the parties' oral evidence and found them to be truthful and credible witnesses.
10. The Tribunal has considered the financial aspects of the relationship. There is evidence of the review applicant sending money to the visa applicant on multiple occasions and the visa applicant told the Tribunal she spent funds on shopping and other needs. The delegate noted that the transfers did not show the sender's details but the review applicant provided a screenshot from his personal account which shows he did arrange the money transfers. Since the visa applicant's arrival in Australia in December 2023 the couple have opened a joint account and while there does not appear to be any need for it at present, noting that the visa applicant is unable to work, the Tribunal accepts that the couple intend to pool their financial resources.
11. There is little evidence of the couple having joint ownership of assets or joint liabilities.
12. With respect to the household, the Tribunal accepts the couple's evidence that since the visa applicant's arrival in Australia they have been living together in the home of the review applicant's parents. The Tribunal also accepts the evidence that they lived in the same household during the review applicant's visits to Lebanon. There appears to be limited sharing of housework (with the review applicant claiming his wife does the housework) but the Tribunal acknowledges that might accord with the couple's cultural norms. The Tribunal also acknowledges their evidence that they wish to start a family and plan to have children as soon as possible. In the Tribunal's view, that suggests that they view the relationship as a long term one.
13. The Tribunal has considered the social aspects of the relationship. There is a volume of photographic evidence in relation to various activities in Australia and Lebanon, as well as from the couple's trip. There are multiple statements from relatives and friends. The visa applicant and sponsor told the Tribunal that their wedding in Lebanon was attended by 500 people and over 300 people will attend their wedding in Australia. The review applicant also described family functions in Australia where the visa applicant was introduced to his family. The Tribunal accepts that the visa applicant lives in the parents' home of the review applicant and the relationship is supported by both families.
14. The Tribunal accepts that the parties represent themselves to others as being married to each other. The Tribunal accepts friends and acquaintances and family members believe the relationship to be a genuine one. The Tribunal accepts that the visa applicant and the review applicant plan and undertake joint social activities.
15. It has been three years since the couple registered their marriage in Lebanon. In that time the review applicant travelled overseas on a number of occasions to be with the visa applicant (and the Tribunal accepts that his ability to travel was impeded by Covid

restrictions and his work commitments). There is before the Tribunal evidence of their communication. The Tribunal accepts that the visa applicant and sponsor view the relationship as a long term one and that they rely on each other for companionship and emotional support.

16. Having regard to all aspects of the relationship, the Tribunal is satisfied that the visa applicant and the review applicant have a mutual commitment to shared life to the exclusion of others. The Tribunal accepts their relationship is genuine and continuing. The Tribunal accepts that they live together at the time of this decision and, when the application was made, they did not live separately and apart on a permanent basis. On the basis of the above the Tribunal is satisfied that the requirements of s 5F(2) are met at the time the visa application was made and the time of this decision. Therefore the visa applicant meets cl 309.211 and cl 309.221.

### **Conclusion**

17. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 309 visa.

### **DECISION**

18. The Tribunal remits the application for a Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa:
  - cl 309.211 of Schedule 2 to the Regulations
  - cl 309.221 of Schedule 2 to the Regulations

Kira Raif  
Senior Member